



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 08-07383  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Jon L. Roberts, Esquire

October 23, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s use of child pornography from 1998 to February 2005 is not mitigated by the passage of time. His favorable evidence hardly outweighs the seriousness of his offenses. He minimized his questionable behavior during his hearing, showing that he lacks reliability, judgment, and trustworthiness. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 18, 2007, Applicant submitted a security clearance application (SF-86). On February 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified

and revised.<sup>1</sup> The SOR alleges security concerns under Guideline E (Personal Conduct), Guideline J (Criminal Conduct), and Guideline D (Sexual Behavior). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and it recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On March 16, 2009, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 30, 2009. Because of case scheduling concerns, it was reassigned to me on May 27, 2009. DOHA issued a notice of hearing on May 28, 2009. The hearing was convened as scheduled on June 22, 2009. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, presented one expert witness, and submitted Applicant Exhibits (AE) 1 through 8, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 6, 2009.

### **Findings of Fact**

Applicant admitted the factual allegations under SOR ¶¶ 1.a and 1.b. He denied all the remaining SOR allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 58-year-old senior security business consultant working as director of security for a defense contractor. He graduated from college in 1977, and received a Bachelor of Science degree in physics. He completed his Master of Science degree (computer science in information security) in 2006. He has been married three times and divorced twice. He married his first wife in 1973, and was divorced in 1982. He married his second wife in 1985, and they were divorced in 2003. Applicant has a 23-year-old son (adopted) from this marriage. In 2006, he married his current wife, and they live happily together. He has two stepchildren ages 18 and 15.

Around 1998, Applicant's second marriage was falling apart, and he began to satisfy his personal needs by viewing erotic materials in the Internet. Between 1998 and 2005, he sought out whatever pornographic material was available to masturbate and cope with his personal situation. Most of the pornographic material he found and saw was legal and did not involve minors or child pornography. Applicant estimated that between 1998 and 2003, he saw approximately 10 images that were illegal (involved

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<sup>1</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines in all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

underage girls) and that he masturbated while viewing them four or five times (GE 2, I-5).

As his insecurity and loneliness increased, he began to selectively find images of young women and to view them preferentially. These included images of girls who could have been 14 to 15 years old, either naked or engaged in some form of sexual activity. In 2004, Applicant was using what he believed was probably illegal material once a month and occasionally as much as twice a week. To be able to see the images, Applicant had to download the files onto his computer. He had three files in his computer that he believed were illegal. He deleted these files in the fall of 2004. He never shared, copied, distributed, or sent illegal images to anyone (GE 2, I-5).

Applicant stated that in the fall of 2004, he met his present wife and by February 2005, he had stopped his behavior. He married his wife in 2006. He expressed remorse for his behavior numerous times. He claimed he was no longer in denial about the seriousness of his offense. He admitted that his judgment was poor, and that he had violated the law and was very ashamed of that fact. Applicant promised that his questionable behavior will not happen again. He has learned to control his impulses. He averred that other than this failure, he has always abided by the law.

Applicant loves America and he is very good at what he does. He believes he has something to offer and would like to continue working for the government and serving his country. He has been successfully working for several government contractors. He affirmed that he can be trusted to serve with honor and integrity (GE 2). Applicant takes the security clearance process seriously. He averred he has been truthful, honest, and forthcoming throughout the whole process. Applicant believes he has learned his lesson and is rehabilitated.

Between 1978 and 2003, Applicant worked in several small businesses performing computer repairs, and worked as an adjunct professor at a state university.<sup>2</sup> He was involved in community projects fostering good will and community relations. He also was involved in leadership roles teaching young people to use computers. Additionally, he was involved in community environmental and conservation groups. Based on the government background interviews, Applicant was considered to be an upstanding member of the community, respected and well-regarded by his neighbors, friends, and co-workers. Outside of the pending allegations, there is no evidence that he was involved in any additional questionable behavior.

Applicant moved to another state in 2003, and started working for government contractors. He received access to classified information at the secret level in July 2003. His access was upgraded to a top secret clearance in September 2004. In 2007, his employer recognized him as the company's most valuable player (AE 6, Tr. 123-4). There is no evidence that Applicant has ever failed to follow security procedures or that he has compromised classified information.

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<sup>2</sup> In 2003, he received an outstanding faculty award from the university (AE 6).

Between June 2004 and April 2005, Applicant was considered for access to classified information by another government agency. In August 2004, Applicant underwent a security clearance interview in which he denied ever being involved in any detected or undetected illegal activities (GE 2, at I-13). After further interviews, in April 2005, Applicant admitted seeking pornography depicting underage girls via the Internet from 1998 to February 2005. He admitted downloading this type of pornography at least three times. During the interview, Applicant stated that the youngest individual depicted in this type of pornography that he viewed was around five years old and the oldest was around 16 years old. The other agency denied Applicant's request for access to classified information because of criminal conduct and personal conduct security concerns, specifically, for his lack of candor throughout his security process (GE 2, at I-13).

In April 2007, Applicant submitted the pending security clearance application. In August 2007, he was interviewed by a DoD investigator concerning his prior security clearance denial. He explained that, during a 2004-2005 interview with another government agency, he was asked whether he had ever seen prohibited material in the Internet and he said "No." Applicant claimed that during a second interview two weeks later he volunteered that he had looked at prohibited material (Internet pictures of nude females, approximately 14 years old, involved in sexual acts). He stated that the pornographic material would have been legal except for the age of the females. Applicant further stated that since February 2005, he had not been involved with any type of pornography, that he had not received any counseling and had dealt with the situation on his own, and that the only person who knew about his past questionable behavior was his wife (GE 2, at I-8).

At his hearing, Applicant denied many of the prior statements he made to government investigators in 2004-2005, 2007, and in his 2008 answers to DOHA interrogatories. He testified that: he did not believe he was looking at child pornography (Tr. 127); he did not seek out the images of underage girls (Tr. 127, 133); he deleted what he believed were illegal images of children immediately (Tr. 127); he maybe saw illegal pictures, but he does not know for a fact that he did (Tr. 130); if there was any indication that the picture included underage children he would not open it (Tr. 148); and he denied seeing illegal images of a five-year-old child. Considering the record evidence as a whole, Applicant's denials are not credible.

During cross-examination, Applicant admitted that on four or five occasions he opened images that were clearly illegal. He claimed that he immediately closed the images and discarded the files. He strongly denied ever seeking pictures of young children. However, he admitted seeking pictures of young women that appeared to be underage. When confronted about the factual differences between his testimony and the June 20, 2005, security clearance denial letter, Applicant averred that the other agency was confused about what he saw and deleted and what he downloaded and kept. Applicant never appealed or attempted to correct the allegations on the June 2005 denial letter.

Applicant testified he is horrendously embarrassed and humiliated by his actions. He claimed he has learned from his “huge mistake” and promised never to repeat his behavior again. He averred that looking at pornography is no longer part of his life, and that he feels guilty about his past behavior. He is now happily married and in a stable relationship. Applicant has disclosed his questionable behavior only to his wife and one friend. Nobody else in his family, group of friends, and co-workers knows about his questionable behavior.

Applicant presented six character letters from longtime friends and co-workers (AE 8). All of his references consider Applicant to be honest, trustworthy, and of high moral character. He was commended for his judgment, maturity, work ethic, and overall performance. All of his references recommended that he receive access to classified information without reservations. Only one of his references is aware of the SOR allegations (Tr. 141).

Additionally, Applicant presented the testimony of a psychiatrist (with a subspecialty in addiction medicine) as an expert witness (AE 2, Tr. 22-89). The doctor prepared two written assessments of Applicant, the first on June 10, 2009 (GE 5). This assessment was prepared without considering the SOR, Applicant’s answers to it, and his prior statements to investigators. The second assessment was prepared on June 20, 2009 (AE 2), after considering the above mentioned documents, but not the June 2005 denial letter. Applicant’s final assessment was also based on two sessions totaling four hours.

In the doctor’s opinion, Applicant tends to be somewhat obsessive. He considers Applicant to be a truthful person. He believes Applicant did not seek child pornography intentionally, and that Applicant’s viewings of such materials were incidental. In his assessment, the doctor concluded that Applicant’s attraction to young women is not pathological; that his seeking pornography from 1998 to 2005, does not show compulsive behavior; and that his behavior is not likely to recur and is clearly under control. In the doctor’s view, it is not clear to Applicant or to the doctor whether Applicant actually viewed images of underage subjects engaged in sexual acts.

In conclusion, the doctor found no evidence of mental illness, personality disorders, or any other problem requiring treatment. He did not see anything that would cast doubt on Applicant’s judgment, reliability, or trustworthiness.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the Applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the [A]pplicant concerned.” See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication that the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the Applicant that may disqualify the Applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an Applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the Applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An Applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

From about 1998 to February 2005, Applicant knowingly accessed, viewed, and downloaded from the Internet images of underage girls who were engaged in sexual activity. He used the images for his own sexual gratification and masturbated while viewing the images. Applicant's behavior violated Section 2252A of Title 18 of the U.S. Code (USC), and constitutes a felony offense.<sup>3</sup> His behavior triggers the applicability of disqualifying condition AG ¶ 16(e): "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing."

Applicant denied that he was denied access to classified information by another government agency in June 2005, as alleged in SOR ¶ 1.c. I find that he was denied access because of the information that is alleged in SOR ¶ 1.a and because of his lack of candor during that other agency's security processing. SOR ¶ 1.c does not allege distinct personal conduct by Applicant. It alleges the agency's response to his conduct. That conduct was adequately addressed by the other agency that had all the underlying facts for its decision. SOR ¶ 1.c is concluded for Applicant. His denial of access by another government agency will be considered under the "whole person" analysis.

AG ¶ 17 lists seven conditions that could mitigate personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made

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<sup>3</sup> The statute defines "minor" as any person under the age of 18 years. "Child pornography" is defined as any visual depiction of sexually explicit conduct where a minor is involved. 18 USC 2256.

aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find that AG ¶¶ 17(a), 17(b), 17(f), and 17(g) do not apply to the facts of this case. I specifically considered AG ¶ 17(c), and determined it does not apply. Applicant's behavior constitutes very serious felony offenses that continue to cast doubt on his judgment, reliability, and trustworthiness. AG ¶ 17(d) does not apply because, at his hearing, Applicant recanted his prior admissions to government agents and minimized his illegal behavior, notwithstanding his previous admissions. AG ¶ 17(e) partially applies because Applicant presented some evidence to show he has taken positive steps to reduce his vulnerability to exploitation or manipulation, e.g., he no longer uses pornographic materials, he is happily married in a stable relationship, he disclosed to his spouse his past illegal behavior, and he disclosed to one friend the SOR allegations. Notwithstanding, Applicant is still vulnerable to exploitation, manipulation, or duress because of his work, and most of his friends, family members, and co-workers are not aware of his past questionable behavior.

### **Guideline J, Criminal Conduct**

Under Guideline J, the security concern is that criminal activity "creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 30.



From about 1998 to February 2005, Applicant knowingly accessed, viewed, downloaded from the Internet, and stored in his computer images of underage girls who were engaged in sexual activity. He used the images for his own sexual gratification and masturbated while viewing the images. Applicant's behavior violated Section 2252A of Title 18 of the U.S. Code (USC), and constitutes a felony offense.<sup>4</sup> His behavior raises security concerns under AG ¶ 31(a) "a single serious crime or multiple lesser offenses," and AG ¶ 31(c) "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

AG ¶ 32 lists four conditions that could mitigate the criminal conduct security concerns raised under AG ¶ 31:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

After considering all the mitigating conditions, I find that AG ¶¶ 32 (a) and (d) partially apply. Applicant's last use of child pornography was in February 2005, and as such, it may be considered somewhat remote.

Applicant averred his criminal behavior was caused by unusual circumstances and that it is unlikely to recur. He used pornography to cope with the loneliness created by his failing marriage. He argued that he has changed his lifestyle and circumstances. He has moved, has new friends, a successful job, and is now happily married. Applicant expressed remorse numerous times, and he has been successful working for several government contractors. He has not accessed any type of pornography since February 2005, because of the embarrassment and humiliation he has endured. There is no evidence that Applicant has been involved in any other misconduct after February 2005.

Notwithstanding, I find Applicant was not candid during his testimony. His testimony conflicted in several areas with the file evidence, including his prior statements to security clearance investigators, his answers to DOHA interrogatories, and his admissions to the SOR. I find Applicant's attempt to minimize his past illegal

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<sup>4</sup> See footnote 3, *supra*.

behavior weighs against a finding of successful rehabilitation. The Guideline J security concern is not mitigated.

#### **Guideline D, Sexual Behavior,**

AG ¶ 12 describes the concern about sexual behavior:

Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 provides four conditions relating to sexual behavior that could raise a security concern and may be disqualifying:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (b) a pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

From about 1998 to February 2005, Applicant knowingly accessed, viewed, downloaded from the Internet, and stored in his computer images of underage girls who were engaged in sexual activity. He used the images for his own sexual gratification and masturbated while viewing the images. His conduct constitutes a felony.

His behavior still makes him vulnerable to coercion because of the nature of his work, the statute of limitations has not lapsed, and his family, friends, and co-workers are not aware of his past behavior. Applicant receives credit for disclosing the information to his wife and one friend; however, that does not fully eliminate his vulnerability concerns.

I conclude Applicant was involved in a pattern of high risk sexual behavior because he sought child pornography during a period of approximately seven years. He knew that viewing child pornography was illegal and he continued to visit the sites that depicted such material in an increasingly frequent basis. At his hearing, Applicant

claimed that his viewing of child pornography was incidental to his search for legal pornographic material. I find his claim not credible in light of his past statements to security personnel, his answers to DOHA interrogatories, and his admissions to the SOR. AG ¶¶ 13(a), 13(b), and 13(c) apply and create a concern. AG ¶ 13(d) partially applies because his behavior shows a lack of judgment.

AG ¶ 14 lists four conditions that could mitigate security concerns:

(a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) the behavior no longer serves as a basis for coercion, exploitation, or duress; and

(d) the sexual behavior is strictly private, consensual, and discreet.

AG ¶ 14(a) does not apply to this case. Concerning AG ¶¶ 14(b) and 14(c), the government cross-alleged the conduct involved in SOR ¶¶ 1.a, 1.b, and 2.a. The analysis and comments contained in the Personal Conduct and Criminal Conduct discussions, *supra*, are incorporated under this subheading.

Applicant sought child pornography during a period of approximately seven years. His last use of child pornography was around February 2005, and as such, it may be considered somewhat remote. I disagree with Applicant's assertion that his questionable behavior was caused by unusual circumstances. Marital separation and divorce, although emotionally painful to many, are not necessarily unusual circumstances in our society. Applicant's evidence shows that during his separation period, he was able to continue a normal life, was successful at work, and significantly contributed to his community as an educator, leader, and advocate.

Applicant expressed remorse for his past behavior. He has been successful working for several government contractors since 2003. He is now happily married, and he has not accessed any type of pornography since February 2005. There is no evidence that Applicant has been involved in any other misconduct after February 2005. These factors indicate that his prior questionable behavior is unlikely to recur.

Notwithstanding, I find Applicant was not candid during his testimony. His testimony conflicted with the file evidence, including his prior statements to security clearance investigators, his answers to DOHA interrogatories, and his admissions to the SOR. I find Applicant's attempt to minimize his past illegal behavior casts doubt on his current reliability, trustworthiness, and judgment. Applicant's sexual behavior was

private and discrete. AG ¶ 14(d) fully applies; however, it does not mitigate the sexual behavior security concern.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature and well-educated man. He was successful as a college professor and was well-regarded in his community for his leadership and involvement in community activities. Since 2003, he has been successful working for several defense contractors. He has established a reputation as a valuable, dedicated and reliable employee. There is no evidence he has ever compromised classified information or committed any security violations. Applicant expressed remorse for his questionable behavior and seems resolute in avoiding similar behavior. There is no evidence of any mental illness or personality disorder, and counseling was not required. Additionally, Applicant is married and in a stable relationship. His wife knows about his questionable behavior. He promised never to access any type of pornography again. These factors show responsibility, good judgment, and mitigation.

On the other hand, Applicant deliberately sought child pornography for approximately seven years notwithstanding his knowledge of the illegality of his actions and the risks associated with it. He continued to seek child pornography after he moved, changed jobs, and met his current wife. It is questionable whether Applicant would have discontinued his child pornography use but for the security clearance process.

On balance, I conclude that Applicant's favorable evidence is insufficient to mitigate the security concerns arising from his personal conduct, criminal conduct, and sexual behavior. Applicant's favorable evidence hardly outweighs the seriousness of his

offense. Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline D:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge